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ANALYSIS FOR STATE OF GEORGIA

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Statute:

GA. CODE. ANN. §§ 32-2-78 to 32-2-80

Summary:

Now allows Georgia DOT to both receive and solicit proposals for PPPs. In May of 2005, several significant amendments to this statute were enacted as S.B. 270. Potential competitors, for example, now have 135 days (instead of 90 days) to respond to an unsolicited proposal.

Key Elements of Georgia's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects? 1	Yes.	GDOT may solicit proposals upon prior notice to the Governor. Unsolicited proposals may also be accepted. §32-2-79. Solicited proposal defined in 32-2-78(6).
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	Yes.	Under §32-2-80(b), the Georgia DOT may make grants and loans.
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?	Private entity by contract.	§32-2-80(b) provides that the PPP agreement may authorize tolls.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	Yes.	§32-2-80(b) provides authority.
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	No.	See §32-2-78(7) definition of "transportation system."
8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No.	
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	Yes.	No express limitation.

10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	No provision.	
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	§32-2-79(i) requires that report with respect to proposed letter of intent to negotiate must be submitted to the Governor and the House and Senate Transportation committees, but their approval is not required.
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No.	
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	Yes.	2-step submittals are authorized by related PPP guidelines.
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?	Yes.	§32-2-80(a) exempts contracts from public bid requirements.
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	"Public-private initiative" is broadly defined in §32-2-78.
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	No.	
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	Yes.	See §32-10-4(12), as amended by SB 270, authorizing the creation of nonprofit corporations as subsidiaries of the Georgia Highway Authority.
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	Yes.	
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No.	
20.	Can the agency charge application fees to offset its proposal review costs?	Yes.	§32-2-79(b)(3)(C) permits fees to be set by rules and regulations of the Georgia DOT. A \$10,000 fee was established in its PPP guidelines

21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	Yes/No.	§32-2-79(f) provides that the period for submission of competing proposals is 135 days.
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	No.	
23.	Are there any non-compete clause prohibitions?	No.	
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?	Authority limited to GDOT.	
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	Yes.	§32-2-79(h) lists certain evaluation criteria.
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	Yes.	Evaluation Committee consisting of a designee of the Governor, a Governor's designee with finance background, the Commissioner of GDOT, the Director of the Tollway Authority and the Director of the Georgia Regional Transportation Authority established §32-2-78, as amended by SB 270. GDOT Initial Review Committee and Advisory Panel created in PPP guidelines.
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	Yes.	§32-2-79(m) After receipt of proposals and competitive interviews have been completed, proposals are subject to disclosure, except that proprietary and trade secret information is protected.
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§32-2-78 definition of a "private contribution" includes maintenance services.

¹ In May of 2005, SB 270 was enacted to provide for, among other things, solicited proposals, extensions of time for competitive proposals and changes to related provisions regarding public disclosure, revenue bonding and surety bonds.

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